

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

Refer Reply To:
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Date:
July 30, 2008

Legend:

X =

A =

d1 =

State =

Dear _____ :

This letter responds to a letter dated January 29, 2008, and subsequent correspondence, written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated under the laws of State. X's sole shareholder, A, intended for X to be an S corporation as of d1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely. X requests a ruling that it will be recognized as an S corporation effective d1.

Law and Analysis

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if a small business corporation makes an election under § 1362(a) for any taxable year, and the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the taxable year or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Conclusion

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make an S corporation election in a timely manner. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 with an effective date of d1 within 60 days following the date of this letter, then such election shall be treated as timely made for X's taxable year effective d1. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/s/

Leslie H. Finlow
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: